

EXHIBIT C-1

LEGAL DESCRIPTION OF PARK OVERPASS PROPERTY

Those portions of Permanent Index Nos., 05-18-210-002, 05-17-107-010, 05-17-106-003, 05-17-106-002, 05-17-106-001, land between Union Pacific Railroad Right of Way and Cooley Ave. Right of Way, Wheaton, Illinois, legally described as follows on which piers, paved path, stairs and support wall will be located, to be substantially in conformity with final site development plan dated April 27, 2004, created by CEMCON, Ltd. and previously delivered by Park to School, as finally revised by CEMCON, Ltd., approved by the Illinois Department of Transportation and permitted by the City of Wheaton and DuPage County:

All that Part of the Northwest $\frac{1}{4}$ of Section 17 and the Northeast $\frac{1}{4}$ of Section 18, Township 39 North, Range 10, East of the Third Principal Meridian, described as follows: Commencing at Point on Section Line 541.8 Feet South of the Northwest Corner of said Section 17; thence North 77 Degrees East 1361.7 Feet to Dividing Line; thence South 00 Degrees, 34 Minutes, 00 Seconds East along Division Line 964.1 Feet to North Line Right of Way Chicago and Northwestern Railroad; thence Northwesterly on a Curve to the Left along North Line of said Right of Way 474.3 Feet; thence Northerly at Right Angles to said Right of Way 7 Feet; thence Westerly on a Curve to the Left parallel with said Right of Way 1,600 Feet; thence South at Right Angles to said Right of Way 7 Feet; thence Westerly on a Curve to the Left along said Right of Way 90.5 Feet to the End of Curve; thence South 84 Degrees, 26 Minutes 00 Seconds West along the North Line of said Right of Way 681.2 Feet; thence North 00 Degrees, 25 Minutes, 00 Seconds East 1489.89 Feet to the Point of Beginning, (except that Part falling within John F. Trzebiatowski's Addition to Wheaton recorded January 8, 1932 as Document Number 321205 and also except that Part falling within the Northwest $\frac{1}{4}$ of Section 17), including that part of Cooley Avenue adjacent thereto vacated by document R2001-138707, in DuPage County, Illinois

P.I.N. 05-18-210-002 and 05-17-107-010

Commonly known as vacant land South of Evans Avenue and North of Union Pacific Railroad, Wheaton, Illinois

AND

Lots 18, 19 and 20 in John F. Trzebiatowski's Addition to Wheaton, Being a Subdivision of Part of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 17, Township 39 North, Range 10, East of the Third Principal Meridian, According to the Plat thereof recorded January 8, 1932 as Document Number 321205, in DuPage County, Illinois

PIN's 05-17-106-001 through -03

Commonly known as vacant land Southeast of Evans Avenue and North of Union Pacific Railroad, Wheaton, Illinois

EXHIBIT C-2

LEGAL DESCRIPTION OF SCHOOL OVERPASS PROPERTY

Those portions of the following described land between Union Pacific Railroad Right of Way and Manchester Road, Wheaton, Illinois, on which a portion of the piers, supporting walls and path will be located, substantially in conformity with final site development plan dated April 27, 2004 created by CEMCON, Ltd. and previously delivered by Park to School, as finally revised by CEMCON, Ltd. , approved by the Illinois Department of Transportation, and permitted by the City of Wheaton and DuPage County.

THE WEST 500 FEET, AS MEASURED AT RIGHT ANGLES TO THE WEST LINE, OF THE FOLLOWING DESCRIBED TRACT OF LAND, TO WIT:

PART OF THE NORTHWEST ¼ OF SECTION 17 AND PART OF THE NORTHEAST ¼ OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT ¼ STAKE IN LINE BETWEEN SECTIONS 17 AND 18; THENCE NORTH ON SECTION LINE, 4.95 CHAINS TO CENTER OF BATAVIA ROAD (NOW KNOWN AS MANCHESTER ROAD) FOR A POINT OF BEGINNING; THENCE SOUTH 77 DEGREES WEST ALONG THE CENTER OF SAID ROAD, 6.20 CHAINS; THENCE NORTH, PARALLEL WITH SECTION LINE, 23.43 CHAINS TO THE SOUTH LINE OF RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILWAY; THENCE EASTERLY (ON A CURVE TO THE RIGHT) ALONG SAID SOUTH LINE OF RAILWAY LANDS 12 CHAINS TO POST IN OLD FENCE; THENCE SOUTH 13 DEGREES EAST, ALONG OLD FENCE, 18.30 CHAINS TO CENTER OF ROAD (A STONE IN SAID LINE AT THE NORTH SIDE OF SAID ROAD); THENCE SOUTH 77 DEGREES WEST, ALONG CENTER OF SAID ROAD, 10.20 CHAINS TO THE POINT OF BEGINNING, IN DU PAGE COUNTY, ILLINOIS

Parcel Nos. 05-17-112-014-0000 and 05-18-211-004-0000

Commonly known as: Monroe Middle School, 1855 Manchester Rd., Wheaton, IL 60187

EXHIBIT D-1

RECIPROCAL EASEMENT AGREEMENT/

GRANT OF RECIPROCAL EASEMENTS

This Reciprocal Easement Agreement/Grant of Reciprocal Easements (this "Agreement") is made between the Wheaton Park District ("Park District") and Board of Education of Community Unit School District 200 (the "School District"), hereinafter referred to as a "Party" or as the "Parties."

WHEREAS, the Park District is the owner of a certain tract of land legally described on **Exhibit A** attached hereto (the "Park Parcel"), upon which Park Parcel are supporting structures, access ramp and paved path for a certain bicycle/pedestrian overpass (the "Overpass") over the right-of-way of the Union Pacific Railroad (such supporting structures, ramp, path and wall being hereinafter collectively referred to as the "Project"), Park District and the School District being the joint owners of the Project and the joint owners of a certain license over said right-of-way of the Union Pacific Railroad, for the purpose of constructing and maintaining the Overpass;

WHEREAS, the School District is the owner of a certain tract of land legally described on **Exhibit B** attached hereto (the "School Parcel"), upon which School Parcel are other supporting structures, a portion of the access ramp and paved path for the Overpass;

WHEREAS, the Park District and the School District are jointly obligated to maintain and repair the Project, pursuant to the terms of a certain Intergovernmental Agreement dated _____, 20____, between the Park District and the School District (the "Intergovernmental Agreement");

WHEREAS, the Parties desire to grant each other easements with respect to the Park Parcel and the School Parcel, for the purpose of maintaining, repairing or reconstructing, as necessary, the Project;

NOW, THEREFORE, in consideration of Ten and 00/100's Dollars (\$10.00) and other good and valuable consideration in hand paid, the Parties hereby agree to the following grants, covenants and restrictions:

1. **Grants of Easements.** The Park District hereby grants to the School District, for the benefit of the School Parcel, and the School District hereby grants to the Park District, for the benefit of the Park Parcel, and to their respective directors, officers, agents, employees, independent contractors, successors and assigns, easements to enter upon the Park Parcel, and the School Parcel, respectively, to do all things which may be necessary to construct, maintain, repair or reconstruct the Project, including the placement of repair or maintenance equipment, supplies and vehicles thereon; provided that no permanent attachments or structures, other than those related to the Project, or the maintenance, repair or reconstruction thereof, may be made to or on the Park Parcel or the School Parcel, respectively, without the prior written consent of the Park District or the School District, as applicable.

2. **Reservation of Rights.** The Park District and the School District hereby reserve to themselves, and their respective successors and assigns, the rights to use the Park Parcel and the School Parcel, respectively, for all purposes related to the ordinary operations of the Park District and the School District and the repair, maintenance or reconstruction, as necessary, of the Project.

3. **No Warranty of Title.** The easements herein granted are subject to all outstanding liens, claims, reservations, covenants or conditions, if any, concerning the Park Parcel and the School Parcel, respectively, whether recorded or unrecorded. The Parties do not warrant title to the Park Parcel or the School Parcel, and do not undertake to defend each other in the peaceable enjoyment thereof. Should

either Party wish to obtain title insurance for the easement herein granted, the other Party will make available any evidence of title in its possession, to the Park Parcel or the School Parcel, as applicable.

4. Binding Effect. All provisions of this Agreement and the easements herein granted, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the respective successors, assigns and tenants of the Parties.

5. Duration of Easements. The easements herein granted shall continue, unless sooner terminated, for so long as the Project is in existence and either the Park District or the School District remains obligated to construct, maintain, repair or reconstruct, as necessary, the Project, whether pursuant to the terms of the Intergovernmental Agreement or otherwise; provided, however, that the easements herein granted shall be deemed terminated if the Project is no longer in existence and no actions to replace the Project have been taken by any person or entity for a period of five (5) years from the date the Project ceased to exist. Either the Park District or the School District may terminate and release the easement herein granted, as a grantee thereof but not as a grantor, by recording an instrument so releasing said grantee's rights.

6. Release and Indemnification.

(a) The Park District, for itself, its directors, officers, agents, employees, successors and assigns (the "Park District and its Agents and Successors"), hereby releases the School District, its directors, officers, agents, employees, successors and assigns (the "School District and its Agents and Successors"), from all liability, claims, demands and causes of action arising out of any injury to or death of any person or any damage to, or loss of property resulting from the use by the Park District and its Agents and Successors of the School Parcel pursuant to this Agreement, except liability, claims, demands and causes of action resulting from or arising out of any wrongful or negligent act or omission by the School District and its Agents and Successors. The Park District hereby indemnifies, holds harmless and agrees to defend the School District and its Agents and Successors from and against all liability, claims, demands and causes of action, including reasonable attorneys' fees, suffered or incurred by the School District and its Agents and Successors by reason of any third party claim, demand or cause of action against the School District and its Agents and Successors where such third party claim, demand or cause of action is related to or caused by any wrongful or negligent act or omission of the Park District and its Agents and Successors on or related to the School Parcel, except to the extent such claim, demand or cause of action is also related to or caused by any wrongful or negligent act or omission by the School District and its Agents and Successors.

(b) The School District and its Agents and Successors hereby releases the Park District and its Agents and Successors (hereinafter referred to as the "Park District and its Agents and Successors") from all liability, claims, demands or causes of action arising out of any, injury to or death of any person, or loss of or damage to property resulting from the use by the School District and its Agents and Successors of the Park Parcel pursuant to this Agreement, except liability, claims, demands and causes of action resulting from or arising out of any wrongful or negligent act or omission by the Park District and its Agents and Successors. The School District hereby indemnifies, holds harmless and agrees to defend the Park District and its Agents and Successors from and against all liability, claims, demands and causes of action, including reasonable attorneys' fees, suffered or incurred by any of the Park District and its Agents and Successors by reason of any third party claim, demand or cause of action against any of the Park District and its Agents and Successors where such third party, claim, demand or cause of action is related to or caused by any wrongful or negligent act or omission of the School District and its Agents and Successors on or related to the Park Parcel, except to the extent such claim, demand or cause of action is also related to or caused by any wrongful or negligent act or omission by any of the Park District and its Agents and Successors.

(c) Nothing herein contained shall be deemed a waiver of any immunities or defenses which any Party may have under the statutes or common law of the State of Illinois.

7. Enforcement; Attorneys' Fees. Any Party may enforce this Agreement and the grants herein contained by appropriate legal action, and should it prevail in said action, the other Party or Parties shall pay the prevailing Party's reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have executed this Reciprocal Easement Agreement/Grant of Reciprocal Easements this ____ day of _____, 20__.

Wheaton Park District

**Board of Education of Community Unit
School District 200**

By: _____
Jeffrey R. Cook
Title: President, Board of Park Commissioners

By: _____
Andrew Johnson
Title: President, Board of Education of
Community Unit School District 200

Attest: _____
Robert Dunsmuir
Secretary, Board of Park Commissioners
of Wheaton Park District

Attest: _____
Secretary, Board of Education of
Community Unit School District 200

Subscribed and sworn to before me this ____
day of _____, 20__.

Subscribed and sworn to before me this ____
day of _____, 20__.

Notary Public
(SEAL)

Notary Public
(SEAL)

**EXHIBIT A TO EXHIBIT D-1 – RECIPROCAL EASEMENT AGREEMENT/ GRANT OF
RECIPROCAL EASEMENTS**

LEGAL DESCRIPTION OF PARK PARCEL

The following legally described land plus fifteen (15) on either side thereof, except where such fifteen (15) feet impinges on the Cooley Ave. right of way:

Those portions of Permanent Index Nos., 05-18-210-002, 05-17-107-010, 05-17-106-003, 05-17-106-002, 05-17-106-001, land between Union Pacific Railroad Right of Way and Cooley Ave. Right of Way, Wheaton, Illinois, described as follows on which piers, paved path, stairs and support wall will be located, to be substantially in conformity with final site development plan dated April 27, 2004, created by CEMCON, Ltd. and previously delivered by Park to School, as finally revised by CEMCON, Ltd., approved by the Illinois Department of Transportation, and permitted by the City of Wheaton and DuPage County:

All that Part of the Northwest $\frac{1}{4}$ of Section 17 and the Northeast $\frac{1}{4}$ of Section 18, Township 39 North, Range 10, East of the Third Principal Meridian, described as follows: Commencing at Point on Section Line 541.8 Feet South of the Northwest Corner of said Section 17; thence North 77 Degrees East 1361.7 Feet to Dividing Line; thence South 00 Degrees, 34 Minutes, 00 Seconds East along Division Line 964.1 Feet to North Line Right of Way Chicago and Northwestern Railroad; thence Northwesterly on a Curve to the Left along North Line of said Right of Way 474.3 Feet; thence Northerly at Right Angles to said Right of Way 7 Feet; thence Westerly on a Curve to the Left parallel with said Right of Way 1,600 Feet; thence South at Right Angles to said Right of Way 7 Feet; thence Westerly on a Curve to the Left along said Right of Way 90.5 Feet to the End of Curve; thence South 84 Degrees, 26 Minutes 00 Seconds West along the North Line of said Right of Way 681.2 Feet; thence North 00 Degrees, 25 Minutes, 00 Seconds East 1489.89 Feet to the Point of Beginning, (except that Part falling within John F. Trzebiatowski's Addition to Wheaton recorded January 8, 1932 as Document Number 321205 and also except that Part falling within the Northwest $\frac{1}{4}$ of Section 17), including that part of Cooley Avenue adjacent thereto vacated by document R2001-138707, in DuPage County, Illinois

P.I.N. 05-18-210-002 and 05-17-107-010

Commonly known as vacant land South of Evans Avenue and North of Union Pacific Railroad, Wheaton, Illinois

AND

Lots 18, 19 and 20 in John F. Trzebiatowski's Addition to Wheaton, Being a Subdivision of Part of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 17, Township 39 North, Range 10, East of the Third Principal Meridian, According to the Plat thereof recorded January 8, 1932 as Document Number 321205, in DuPage County, Illinois

PIN's 05-17-106-001 through -03

Commonly known as vacant land Southeast of Evans Avenue and North of Union Pacific Railroad, Wheaton, Illinois

**EXHIBIT B TO EXHIBIT D-1- RECIPROCAL EASEMENT AGREEMENT/
GRANT OF RECIPROCAL EASEMENTS**

LEGAL DESCRIPTION OF SCHOOL PARCEL

The following legally described property plus fifteen (15) feet to the east:

Those portions of the following described land between Union Pacific Railroad Right of Way and Manchester Road, Wheaton, Illinois, on which a portion of the piers, supporting walls and path will be located, substantially in conformity with final site development plan dated April 27, 2004 created by CEMCON, Ltd. and previously delivered by Park to School, as finally revised by CEMCON, Ltd., approved by the Illinois Department of Transportation and permitted by the City of Wheaton and DuPage County.

THE WEST 500 FEET, AS MEASURED AT RIGHT ANGLES TO THE WEST LINE, OF THE FOLLOWING DESCRIBED TRACT OF LAND, TO WIT:

PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 17 AND PART OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT $\frac{1}{4}$ STAKE IN LINE BETWEEN SECTIONS 17 AND 18; THENCE NORTH ON SECTION LINE, 4.95 CHAINS TO CENTER OF BATAVIA ROAD (NOW KNOWN AS MANCHESTER ROAD) FOR A POINT OF BEGINNING; THENCE SOUTH 77 DEGREES WEST ALONG THE CENTER OF SAID ROAD, 6.20 CHAINS; THENCE NORTH, PARALLEL WITH SECTION LINE, 23.43 CHAINS TO THE SOUTH LINE OF RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILWAY; THENCE EASTERLY (ON A CURVE TO THE RIGHT) ALONG SAID SOUTH LINE OF RAILWAY LANDS 12 CHAINS TO POST IN OLD FENCE; THENCE SOUTH 13 DEGREES EAST, ALONG OLD FENCE, 18.30 CHAINS TO CENTER OF ROAD (A STONE IN SAID LINE AT THE NORTH SIDE OF SAID ROAD); THENCE SOUTH 77 DEGREES WEST, ALONG CENTER OF SAID ROAD, 10.20 CHAINS TO THE POINT OF BEGINNING, IN DU PAGE COUNTY, ILLINOIS

Parcel Nos. 05-17-112-014-0000 and 05-18-211-004-0000

Commonly known as: Monroe Middle School, 1855 Manchester Rd., Wheaton, IL 60187

EXHIBIT D-2

FORM OF QUIT CLAIM DEED TO MANCHESTER ACCESS PARCEL

THIS QUIT CLAIM DEED is made this day of _____, 20____, between Community Unit School District 200, DuPage County, Illinois, 130 West Park Ave., Wheaton, Illinois 60187, an Illinois school district, as Grantor, and the Wheaton Park District, 666 South Main Street, Wheaton, Illinois 60187, an Illinois Park District, as Grantee

The Grantor, for and in consideration of the sum of One and 00/100's dollars (\$1.00) and other good and valuable consideration, the receipt of which is acknowledged by Grantee, does by this Quit Claim Deed quit claim and convey to Grantee, its successors and assigns forever, Grantor's entire right, title and interest in and to the real estate described in **Exhibit A** [to be created by CEMCON, Ltd.] attached hereto situated in the City of Wheaton, County of DuPage, State of Illinois (the "Real Estate") together with i) all improvements on said Real Estate, ii) all related privileges, rights, easements, hereditaments and appurtenants pertaining to said Real Estate, if any, and iii) all right title and interest of the Grantor in and to any streets, alleys, passages and other rights of way included in said Real Estate, if any,

TO HAVE AND TO HOLD unto the Grantee, its successors and assigns, forever;

IN WITNESS WHEREOF, the said Grantor has executed this Quit Claim Deed as of the date first above written.

COMMUNITY UNIT SCHOOL DISTRICT 200, DuPage County, Illinois, an Illinois School District

By: _____
Andrew Johnson, President

Attest: _____
_____, Secretary

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that _____, personally known to me to be the President of the Board of Education of Community Unit School District, an Illinois school district, and _____, personally known to me to be the Secretary of said Board of Education of Community Unit School District 200, DuPage County, Illinois, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as said President and Secretary, they signed, sealed and delivered the said instrument in their respective official capacities, pursuant to authority given by the Board of Education of said school district as the free and voluntary act and deed of said school district, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 20____.

Notary Public

(Seal)

EXHIBIT A TO EXHIBIT D-2, QUIT CLAIM DEED
LEGAL DESCRIPTION OF MANCHESTER ACCESS PROPERTY
TO BE PREPARED BY CEMCON, LTD AFTER COMPLETION
OF CONSTRUCTION OF PROJECT

EXHIBIT D-3

COOLEY ACCESS EASEMENT AGREEMENT

This Cooley Access Easement Agreement (this "Agreement") is made between the Wheaton Park District ("Park District") and the Board of Education of Community Unit School District 200 (the "School District"), hereinafter referred to as a "Party" or as the "Parties."

WHEREAS, the Park District is the owner of a certain tract of land legally described on **Exhibit A** attached hereto (the "Park Overpass Property"), upon which Park Overpass Property are supporting structures, stairs, an access ramp and a paved path for a certain bicycle/pedestrian/hiker overpass over the right-of-way of the Union Pacific Railroad (the "Overpass");

WHEREAS, the School District is the owner of a certain tract of land legally described on **Exhibit B** attached hereto (the "School Overpass Property"), upon which School Overpass Property are other supporting structures, a portion of an access ramp and a paved path for the Overpass;

WHEREAS, the School District wishes to obtain permanent access to the Overpass from the Cooley Avenue Right-of-Way, across and over a portion of the Park Overpass Property (the "Cooley Access Easement Parcel"), depicted on **Exhibit C** attached hereto, and the Park District is willing to grant to School District such permanent access on a non-exclusive basis, all pursuant to the terms of a certain Intergovernmental Agreement between the Park District and the School District dated _____, 20____ (the "Intergovernmental Agreement");

NOW, THEREFORE, in consideration of Ten and 00/100's Dollars (\$10.00) and other good and valuable consideration in hand paid, the Parties hereby agree to the following grant, covenants and restrictions.

1. Grant of Easement. The Park District hereby grants to the School District, its successors, successors-in-title, directors, officers, agents, employees, independent contractors and invitees, an easement across and over the Cooley Access Easement Parcel, for the purpose of access by pedestrians, hikers and bicyclists to the Overpass from the Cooley Ave. right-of-way or any other road or land adjacent to the northeast end of the Cooley Access Easement Parcel, and for the purpose of constructing, repairing, maintaining, and reconstructing any path to the Overpass on the Cooley Access Easement Parcel, including the placement of repair or maintenance equipment, supplies and vehicles thereon, provided that no permanent structure other than a paved path may be placed on the Cooley Access Easement Parcel, all as an easement appurtenant to the School Overpass Property.

2. Non-Exclusive Easement; Reservation of Rights. The grant of easement herein contained is non-exclusive, and the Park District hereby reserves to itself and its successors and successors-in-title the right to use the Cooley Access Easement Parcel for all purposes related to the ordinary ownership and operation of the Cooley Access Easement Parcel, provided that the exercise of such rights shall not interfere with the easement herein granted, and, in particular, the Park District and its successors and successors-in-title shall not place any fence or barricade which would obstruct the use of the Cooley Access Easement Parcel for access to the Overpass.

3. No Warranty of Title. The easement herein granted is subject to all outstanding liens, claims, reservations, covenants or conditions, if any, concerning the Cooley Access Easement Parcel, and the Park District does not undertake to defend the School District in its peaceable enjoyment thereof. Should the School District wish to obtain title insurance for the easement herein granted, it shall do so at its expense, provided that the Park District shall make available to the School District, on the School District's request, any evidence of title to the Cooley Access Easement Parcel in its possession.

4. Duration of Easement. The easement herein granted shall continue, unless sooner terminated, for so long as the Overpass is in existence and either Park District or School District remains obligated to construct, maintain, repair or reconstruct, as necessary, the Overpass, whether pursuant to the terms of the Intergovernmental Agreement or otherwise; provided, however, that the easement herein granted shall be deemed terminated if the Overpass is no longer in existence and no actions to replace the Overpass have been taken by any person or entity for a period of five (5) years from the date the Overpass ceased to exist. The School District may terminate and release the easement herein granted, by recording an instrument so releasing the School District's rights.

5. Binding Effect. All provisions of this Agreement and the easement herein granted, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the respective successors, assigns and tenants of the Parties.

6. Release and Indemnification. The School District, for itself, its directors, officers, agents, employees, successors and assigns (the "School District and its Agents and Successors"), hereby releases the Park District, its commissioners, officers, agents, employees, successors and assigns (the "Park District and its Agents and Successors"), from all liability, claims, demands and causes of action arising out of any injury to or death of any person, or any loss of or damage to property resulting from the use by the School District and its Agents and Successors of the Cooley Access Easement Parcel pursuant to this Agreement, except liability, claims, demands and causes of action resulting from or arising out of any wrongful or negligent act or omission by the Park District and its Agents and Successors. The School District hereby indemnifies, holds harmless and agrees to defend the Park District and its Agents and Successors from and against all liability, claims, demands and causes of action, including reasonable attorneys' fees, suffered or incurred by any of the Park District and its Agents and Successors by reason of any third party claim, demand or cause of action against any of the Park District and its Agents and Successors where such third party claim, demand or cause of action is related to or caused by any wrongful or negligent act or omission of any of the School District and its Agents and Successors on or related to the Cooley Access Easement Parcel, except to the extent such claim, demand or cause of action is also related to or caused by any wrongful or negligent act or omission by any of the Park District and its Agents and Successors.

7. Enforcement; Attorneys' Fees. Any Party may enforce this Agreement, and the grant herein contained, by appropriate legal action, and should it prevail in said action, the other Party or Parties shall pay the prevailing Party's reasonable attorneys' fees and court costs.

IN WITNESS WHEREOF, the Parties have executed this Cooley Access Easement Agreement this ____ day of _____, 20____.

Wheaton Park District

**Board of Education of Community Unit
School District 200**

By: _____
Jeffrey R. Cook
Title: President, Board of Park Commissioners
of Wheaton Park District

By: _____
Andrew Johnson
Title: Secretary, Board of Education of
Community Unit School District 200

Attest: _____
Robert Dunsmuir
Secretary, Board of Park Commissioners
Wheaton Park District

Attest: _____
Secretary, Board of Education of
Community Unit School District 200

Subscribed and sworn to before me this
day of _____, 20__.

Notary Public
(SEAL)

Subscribed and sworn to before me this _____
day of _____, 20__.

Notary Public
(SEAL)

EXHIBIT A TO EXHIBIT D-3, COOLEY ACCESS EASEMENT AGREEMENT

LEGAL DESCRIPTION OF PARK OVERPASS PROPERTY

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P.I.N. 05-18-210-002 and 05-17-107-010

Commonly known as vacant land South of Evans Avenue and North of Union Pacific Railroad, Wheaton, Illinois

AND

Lots 18, 19 and 20 in John F. Trzebiatowski's Addition to Wheaton, Being a Subdivision of Part of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 17, Township 39 North, Range 10, East of the Third Principal Meridian, According to the Plat thereof recorded January 8, 1932 as Document Number 321205, in DuPage County, Illinois

PIN's 05-17-106-001 through -03

Commonly known as vacant land Southeast of Evans Avenue and North of Union Pacific Railroad, Wheaton, Illinois

EXHIBIT B TO EXHIBIT D-3. COOLEY ACCESS EASEMENT AGREEMENT

LEGAL DESCRIPTION OF SCHOOL OVERPASS PROPERTY

Those portions of the following described land between Union Pacific Railroad Right of Way and Manchester Road, Wheaton, Illinois, on which a portion of the piers, supporting walls and path will be located, , substantially in conformity with final site development plan dated April 27, 2004 created by CEMCON, Ltd. and previously delivered by Park to School, as finally revised by CEMCON, Ltd., approved by the Illinois Department of Transportation and permitted by the City of Wheaton and DuPage County:

THE WEST 500 FEET, AS MEASURED AT RIGHT ANGLES TO THE WEST LINE, OF THE FOLLOWING DESCRIBED TRACT OF LAND, TO WIT:

PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 17 AND PART OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT $\frac{1}{4}$ STAKE IN LINE BETWEEN SECTIONS 17 AND 18; THENCE NORTH ON SECTION LINE, 4.95 CHAINS TO CENTER OF BATAVIA ROAD (NOW KNOWN AS MANCHESTER ROAD) FOR A POINT OF BEGINNING; THENCE SOUTH 77 DEGREES WEST ALONG THE CENTER OF SAID ROAD, 6.20 CHAINS; THENCE NORTH, PARALLEL WITH SECTION LINE, 23.43 CHAINS TO THE SOUTH LINE OF RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILWAY; THENCE EASTERLY (ON A CURVE TO THE RIGHT) ALONG SAID SOUTH LINE OF RAILWAY LANDS 12 CHAINS TO POST IN OLD FENCE; THENCE SOUTH 13 DEGREES EAST, ALONG OLD FENCE, 18.30 CHAINS TO CENTER OF ROAD (A STONE IN SAID LINE AT THE NORTH SIDE OF SAID ROAD); THENCE SOUTH 77 DEGREES WEST, ALONG CENTER OF SAID ROAD, 10.20 CHAINS TO THE POINT OF BEGINNING, IN DU PAGE COUNTY, ILLINOIS

Parcel Nos. 05-17-112-014-0000 and 05-18-211-004-0000

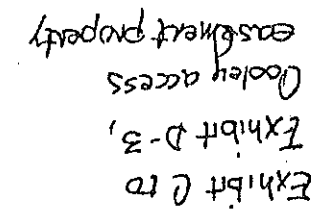
Commonly known as Monroe Middle School, Manchester Rd., Wheaton, IL 60187


EXHIBIT C TO EXHIBIT D-3, COOLEY ACCESS EASEMENT AGREEMENT

DEPICTION OF COOLEY ACCESS EASEMENT PARCEL

See attached

As finally revised and approved by CEMCON, Ltd.



 = Easement Property

2 (SEE TABLE)

WE SHALL HAVE EROSION CONTROL BLANKET

OVERALL SOIL EROSION, SEDIMENTATION CONTROL PLAN AND DETAILS
PEDESTRIAN/BICYCLE PATH BRIDGE OVER UNION PACIFIC RAILROAD

FILE NAME: SOILPRO	DSGN. BY: JAC	JOB NO.: 551007	FLD. BKG./PG.: —	5 of 52
DISC. NUMBER: 551007	DRN. BY: KWS	DATE: 04-26-04	SCALE: 1" = 50'	

DRAWING NO. 02
 SHEET NO. 5 of 52
 ALL RIGHTS RESERVED.

EXHIBIT D - 4

**TEMPORARY CONSTRUCTION ACCESS
AND EQUIPMENT AND MATERIALS STORAGE
LICENSE AGREEMENT**

THIS TEMPORARY CONSTRUCTION ACCESS AND EQUIPMENT AND MATERIALS STORAGE LICENSE AGREEMENT (the "Agreement") is made and entered into as of this ____ day of ____, 20__ by and between **WHEATON PARK DISTRICT**, an Illinois park district and unit of local government (the "Licensee"), and the **BOARD OF EDUCATION OF COMMUNITY UNIT SCHOOL DISTRICT 200**, an Illinois school district (the "Licensor"). Licensor and Licensee are hereinafter sometimes jointly referred to as the "Parties".

RECITALS

A. Licensor owns certain real property in the City of Wheaton, DuPage County Illinois, legally described in **Exhibit A** attached to and incorporated by reference in this Agreement, which is commonly known as the Monroe School property (the "Property").

B. Licensee and Licensor have entered into a certain Intergovernmental Agreement for the Funding, Construction, Maintenance and Governance of a Bicycle/Pedestrian Overpass Over Union Pacific Railroad Company Property and Connection Bicycle/Pedestrian Trail (the "Overpass Agreement"), dated ____, 20__, pursuant to which Overpass Agreement the Parties have agreed to finance, construct, maintain and govern a certain bicycle/pedestrian/hiker bridge structure, including access ramps and stairs and above grade paths (collectively, the "Overpass Structure"), a path and adjacent retaining wall to Manchester Road, a path to Nepil Ave. and Cottonwood Ave, and fencing north of the right of way of the Union Pacific Railroad Company (the "Railroad"), said Overpass Structure together with such paths, wall and fencing being hereinafter referred to as the "Project") on and over certain property owned and/or controlled, leased, used or operated by the Railroad or one of the Parties.

C. Pursuant to the Overpass Agreement, the Parties have agreed that the Project will be constructed on certain property owned by the Licensee north of the Railroad right-of-way and on a portion of the Property south of the Railroad right-of-way. Also pursuant to the Overpass Agreement, the Licensee is the lead agency in contracting for and supervision of construction of the Project.

D. Licensee desires to use a portion of the Property for access to the area on which the Project will be built (the "Construction Area"), for activities related to the construction of the Project and to store construction equipment and materials (the "Licensed Activities"), over a period of approximately nine (9) months. Licensee has requested permission from Licensor to enter upon the Property from Manchester Road near the southwest corner of the Property and use the existing paved drive for access to the Construction Area, to enter upon the Property from Graf Park to the east, and use a portion of the Property south of the Railroad right-of-way for the Licensed Activities. The area of the Property immediately south of the Railroad right-of-way, a portion of which Licensee will use for the Licensed Activities, is depicted on **Exhibit B** attached to and incorporated by reference in this Agreement, the Parties acknowledging that Licensee is not entitled to use all of the Property shown on Exhibit B but only that portion to which Licensor and Licensee may reasonably agree. (all of said portions of the Property being hereinafter referred to as the "Licensed Premises").

E. Licensee has represented to Licensor, and Licensor concurs, that there is no other means of access to the Construction Area and no other area on which to conduct the Licensed Activities other than over and upon the Licensed Premises.

F. In view of the circumstances, and in the interest of intergovernmental cooperation, Licensor is

willing to grant permission to Licensee to use the Licensed Premises for the Licensed Activities, upon and subject to the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The above recitals are hereby incorporated in their entireties by reference in this Agreement.

2. Licensor hereby grants to Licensee a temporary license (the "License") to use the Licensed Premises for the Licensed Activities, upon and subject to the terms and conditions set forth in this Agreement.

3. The License shall commence on _____, 20____ and shall expire on _____, 20____, [to be a period no longer than nine (9) months] unless extended in writing by Licensor or unless sooner terminated by Licensor in accordance with paragraph 19, below (the "License Term"). The obligations of Licensee under this Agreement shall survive the expiration or termination of the License and under no circumstances shall any such obligation be deemed discharged until fully performed in accordance with the provisions of this Agreement.

4. The License shall be used and enjoyed solely by Licensee and its duly authorized employees, agents and contractors for the Licensed Activities, and Licensee shall not assign its License rights in whole or in part or grant permission to traverse, enter upon or otherwise use the Licensed Premises to any other person.

5. No equipment or machinery shall be brought or permitted to come onto the Property except along or on the Licensed Premises, and subject to such reasonable restrictions as shall be specified by Licensor. Licensee shall not use Licensor's paved drive off of Manchester Road at such times as school buses are using such drive. Prior to commencement of construction of the Project, Licensor's and Licensee's representatives shall meet and in good faith develop a construction activity schedule which will allow the Project to be constructed in the most efficient manner and in the shortest time possible, with the least inconvenience to Licensor's normal use of the Property.

6. Equipment, machinery, tools or materials shall be stored or be permitted to remain overnight on the Property only on the Licensed Premises.

7. No explosives or flammable or hazardous substances of any kind shall be transported across, brought upon, or stored or deposited on, the Property, except with the prior written consent of Licensor.

8. The Licensed Premises at all times shall be kept free of accumulations of debris, waste and garbage.

9. Licensor shall have the right at any time to:

- (a) impose reasonable weight and load restrictions which Licensor reasonably determines are necessary or advisable under the circumstances;

- (b) suspend the License for safety or health reasons or for breach by Licensee of any of its obligations under this Agreement, without waiving Licensor's right to terminate the License as provided in paragraph 19, below.

10. Licensor's reservation of such rights or its failure to exercise same shall not impose or create any responsibility or liability on Licensor or affect, reduce or nullify in any way Licensee's obligations under this Agreement, including without limitation its obligations under paragraphs 15, 16 and 17, below.

11. Licensor shall have the right to use the Property including the Licensed Premises at any time for any purpose which does not unreasonably interfere with the License, including permitting the construction, maintenance and operation on, over or under the Property of any public utility facility. Licensor shall have the right to enter upon the Licensed Premises at any time(s) to inspect, maintain or repair the Property including the Licensed Premises and improvements thereon, to determine Licensee's compliance with the terms and conditions of this Agreement, and for any other lawful purpose(s).

12. Licensee shall conduct and shall require its employees, agents and contractors to conduct the Licensed Activities at all times in a safe manner. In furtherance and not in limitation of such obligation, Licensee will construct, and at all times during the License Term will maintain in good and safe repair and condition, safety fencing separating the Licensed Premises from the remainder of the Property, the cost of such safety fencing being a Project expense under the terms of the Overpass Agreement. The type of fencing utilized shall be subject to Licensor's prior approval, which approval shall not be unreasonably withheld or delayed.

13. Licensee shall comply with all applicable federal, state and local laws, rules and regulations in the conduct of the Licensed Activities.

14. Upon termination of the License by expiration or otherwise, Licensee shall restore the Licensed Premises and any other affected portion(s) of the Property to the condition existing immediately prior to the commencement of any activity thereon by Licensee. Additionally, Licensee shall repair all damage to the Licensed Premises, any improvements located thereon and any other affected portion(s) of the Property and replace all lost or destroyed items, including but not limited to reconfiguring and resodding the present ballfield in the Licensed Premises. The cost of such restoration, repair and replacement is a project cost under the Overpass Agreement. Licensee shall also install new lights and fencing for such ballfield, at its own expense. By way of example and not limitation, all turf areas will be replaced and sodded to match the existing turf areas adjacent to the Licensed Premises, and all damage to paved areas will be restored to match existing paved areas as much as reasonably possible. Any damage to sidewalks or paths will be repaired or replaced as reasonably deemed necessary by Licensor. All restoration, repair and replacement shall be completed to the reasonable satisfaction of Licensor within thirty (30) days after the end of the License Term or, if due to weather conditions or other circumstances which, in Licensor's opinion, would make any such restoration, repair and replacement inadvisable, then within such later time period as Licensor reasonably shall request.

15. Licensee shall conduct its operations on the Property entirely at its own risk. To the fullest extent permitted by the laws of the State of Illinois, Licensee hereby forever waives, relinquishes and discharges and holds harmless Licensor, its school board members, officers, employees and agents from, any and all claims of every nature whatsoever, which Licensee may have at any time against Licensor, its school board members commissioners, officers, employees and/or agents, including without limitation claims for personal injury or property damage sustained or incurred by Licensee or any person claiming by, through or under Licensee, relating directly or indirectly to the construction of the Project.

16. Licensee shall defend, indemnify and hold harmless Licensor, its school board members, officers, employees and agents against and from any and all liabilities, claims, losses, costs, damages and

expenses of every nature whatsoever, including without limitation reasonable attorneys' and paralegal fees, suffered, incurred or sustained by any such indemnified entity or persons, including without limitation liabilities for the death of or injury to any person or the loss, destruction or theft of or damage to any property, relating directly or indirectly to, or arising directly or indirectly from, the exercise by Licensee, its employees, agents, or contractors or any other person acting on its or their behalf or with its or their authority or permission, of the rights and privileges granted Licensee under this Agreement, except to the extent such liabilities, claims, losses, costs, damages and expenses are caused by any wrongful or negligent act or omission of Licensors, its school board members, officers, employees and agents. Licensee shall defend, indemnify and hold harmless Licensors against and from any and all claims, losses, costs, damages and expenses, including without limitation reasonable attorneys' and paralegal fees, suffered, sustained or incurred by Licensors as a result of Licensee's breach of any provision of this Agreement or otherwise incurred by Licensors in enforcing the terms of this Agreement. Nothing herein contained shall be deemed a waiver of any immunities or defenses which Licensee or Licensors may have under the statutes or common law of the State of Illinois

17. In addition to, and in furtherance and not in limitation of, Licensee's obligations in paragraphs 15 and 16, above, and at no cost to Licensors, Licensee shall require its contractor(s) performing work on the Project to obtain and keep in full force and effect for so long as any claim relating to the construction of the Project legally may be asserted, comprehensive general liability and property damage insurance written to include the coverages and for not less than the minimum limits or greater if required by law, as provided in **Exhibit E-2-A** to the Overpass Agreement.

18. Licensee shall not cause or suffer or permit to be created any mechanic's or materialmen's liens or claims against the Property. Licensee shall defend, indemnify and hold harmless Licensors from and against any such claims or liens.

19. The License granted Licensee hereunder may be terminated prior to its expiration date:

- a. immediately upon written notice to Licensee in the event Licensee or its contractor(s) shall fail to procure or maintain the insurance required under paragraph 17, above, or shall fail to provide evidence of such coverage as required above; or
- b. immediately upon Licensee's failure to remedy or obtain remedy by its contractor(s) of any breach of any term or condition of this License Agreement (other than paragraph 17 regarding insurance) within ten (10) days after written notice of such breach is delivered to Licensee; or
- c. immediately upon abandonment of the construction of the Overpass Structure by Licensee or its contractor(s). For purposes of this subparagraph, abandonment shall be deemed to have occurred in the event no activity is conducted with respect to construction of the Project for a period of 30 consecutive days after such construction has commenced.

20. This Agreement and the License granted hereunder does not create any title to or interest in the Property, in whole or in part, in favor of Licensee, or any property rights appurtenant to any property owned by Licensee.

21. No waiver of any rights which Licensors has in the event of any default or breach by Licensee under this Agreement shall be implied from failure by Licensors to take any action on account of such breach or default, and no express waiver shall affect any breach or default other than the breach or default specified in the express waiver and then only for the time and to the extent therein stated.

22. Notices shall be deemed properly given hereunder if in writing and either hand delivered or sent by registered or certified mail, return receipt requested, to the Parties at their respective addresses provided below, or as either Party may otherwise direct in writing to the other Party from time to time. Notices sent by mail shall be deemed delivered the third day after deposit in the mail.

If to Licensor:

Community Unit School District 200
Admin. and School Service Center
130 West Park Ave.
Wheaton, IL 60187
Attn: Superintendent

If to Licensee:

Wheaton Park District
666 S. Main Street
Wheaton, IL 60187
Attention: Executive Director

23. This Agreement contains the entire agreement between the Parties with respect to the use of the Property by Licensee in connection with the Project and cannot be modified except by a writing, dated subsequent to the date hereof and signed by both Parties.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by a duly authorized officer, as of the year and date first above written.

LICENSEE:

WHEATON PARK DISTRICT

LICENSOR:

BOARD OF EDUCATION OF
COMMUNITY UNIT SCHOOL DISTRICT 200

By: _____
Jeffrey R. Cook, President

By: _____
Andrew Johnson, President

EXHIBIT A TO EXHIBIT D-4
THE PROPERTY

THE WEST 500 FEET, AS MEASURED AT RIGHT ANGLES TO THE WEST LINE, OF THE FOLLOWING DESCRIBED TRACT OF LAND, TO WIT:

PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 17 AND PART OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT $\frac{1}{4}$ STAKE IN LINE BETWEEN SECTIONS 17 AND 18; THENCE NORTH ON SECTION LINE, 4.95 CHAINS TO CENTER OF BATAVIA ROAD (NOW KNOWN AS MANCHESTER ROAD) FOR A POINT OF BEGINNING; THENCE SOUTH 77 DEGREES WEST ALONG THE CENTER OF SAID ROAD, 6.20 CHAINS; THENCE NORTH, PARALLEL WITH SECTION LINE, 23.43 CHAINS TO THE SOUTH LINE OF RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILWAY; THENCE EASTERLY (ON A CURVE TO THE RIGHT) ALONG SAID SOUTH LINE OF RAILWAY LANDS 12 CHAINS TO POST IN OLD FENCE; THENCE SOUTH 13 DEGREES EAST, ALONG OLD FENCE, 18.30 CHAINS TO CENTER OF ROAD (A STONE IN SAID LINE AT THE NORTH SIDE OF SAID ROAD); THENCE SOUTH 77 DEGREES WEST, ALONG CENTER OF SAID ROAD, 10.20 CHAINS TO THE POINT OF BEGINNING, IN DU PAGE COUNTY, ILLINOIS

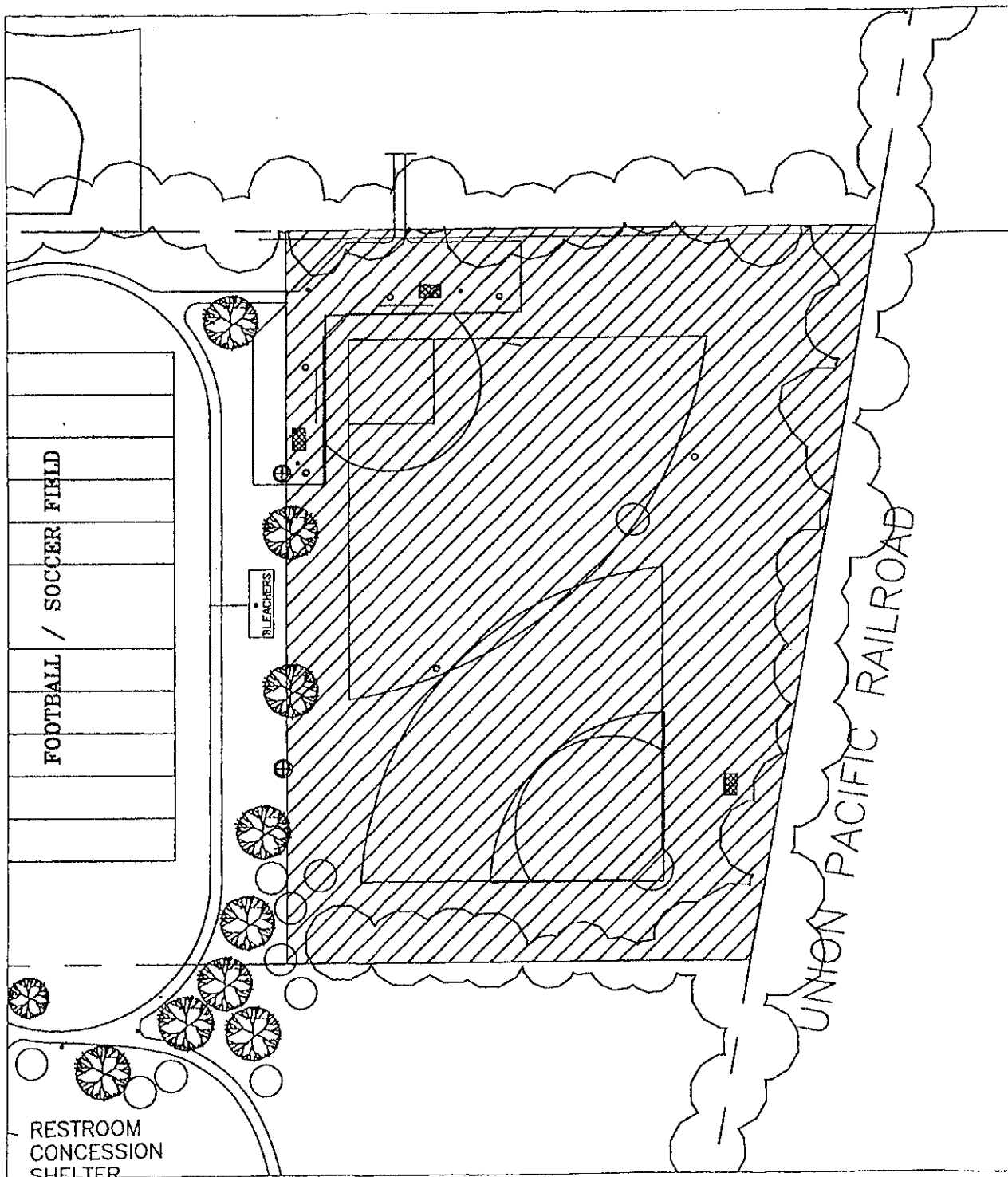
Parcel Nos. 05-17-112-014-0000 and 05-18-211-004-0000

Commonly known as: Monroe Middle School, 1855 Manchester Rd., Wheaton, IL 60187

EXHIBIT B TO EXHIBIT D-4
DEPICTION OF LICENSED PREMISES

See attached

EXHIBIT B TO TEMPORARY LICENSE DEPICTION OF LICENSED PREMISES



SCALE 1" = 100'

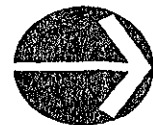


EXHIBIT E-1

INSURANCE TO BE MAINTAINED BY PARTIES

Each Party shall obtain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence and a general aggregate limit of at least \$4,000,000.00. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, including death, property damage and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a contract), and, subject to the prior agreement of the Parties, liability arising from the indemnity provisions contained in any agreement among the Parties and the Railroad. The CGL insurance shall also provide for Broad Form Contractual Liability, Underground Hazard and Broad Form Property Damage.

Each Party shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance of self-insurance afforded to the other Party or the Railroad.

B. Business Auto and Umbrella Liability Insurance

Business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 for each occurrence or claim. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos, and mobile equipment to the extent excluded from CGL coverage.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provided contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

C. Workers Compensation Insurance

Workers compensation and employers liability insurance as required by statute, and the commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the other Party has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 26 under the Commercial General and Umbrella Liability insurance required in this Agreement, the insured Party waives all rights against the other Party and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to this Agreement.

D. General Insurance Provisions.

1. Evidence of Insurance

Upon execution of this Agreement, the Insured Party shall furnish each other Party with (a) certificate(s) of insurance, other than Accord 25-S, and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All policies shall provide for 30 days' written notice to each other Party prior to the cancellation or material change of any insurance referred to therein. Written notice to each other Party or the Railroad shall be by certified mail, return receipt requested.

Failure of any other Party to demand such certificate, policy, endorsement or other evidence of full compliance with these insurance requirements or failure of any other Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the insured Party's obligation to maintain such insurance.

Failure to maintain the required shall constitute a default under the Agreement.

The insured Party shall provide certified copies of all insurance policies required above within 10 days of the other Party's written request for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the other Party has the right to reject insurance written by insurer it deems unacceptable. Said insurance companies must be licensed to do business in Illinois.

3. Cross-Liability Coverage

If the Parties' liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must declared to the other Party. At the option of the other Party or the Railroad, the insured Party may be asked to eliminate such deductibles or self-insured retentions as respects the other Party its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

EXHIBIT E-2-A

INSURANCE COVERAGES TO BE MAINTAINED BY CONTRACTOR DURING CONSTRUCTION OR MAJOR RECONSTRUCTION OF OVERPASS

Contractor shall obtain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, including death, property damage and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and liability arising from the indemnity provisions of any agreement between the Contractor and the Railroad. The CGL insurance shall also provide for Broad Form Property Damage, and Underground Hazard.

The Parties shall be included as insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Parties.

There shall be no endorsement of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

B. Continuing Completed Operations Liability Insurance

Contractor shall maintain commercial general liability (CGL) and, if required by the Parties, commercial umbrella liability insurance with a limit of not less than \$5,000,000 each occurrence for at least three years following substantial completion of the work.

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 10 93, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

C. Business Auto and Umbrella Liability

Contractor shall maintain business auto liability and commercial umbrella liability insurance with a limit of not less than \$2,000,000 for each occurrence or claim. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos, and mobile equipment to the extent it may be excluded from CGL coverage.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

D. Workers Compensation Insurance

Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the Parties have not been included as insureds under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Agreement, the Contractor waives all rights against the Parties, the Railroad, their officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's work.

E. General Insurance Provisions

1. Evidence of Insurance

Prior to beginning work, contractor shall furnish the Parties with a certificate(s) of insurance, other than Accord 25-S, and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All policies shall provide for 30 days' written notice to the Parties prior to the cancellation or material change of any insurance referred to therein. Written notice to the Parties shall be by certified mail, return receipt requested.

Failure of the Parties to demand such certificate, policy, endorsement or other evidence of full compliance with these insurance requirements or failure of the Parties to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

The Parties shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Parties

Failure to maintain the required insurance may result in termination of this Contract at the Parties' option.

With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) or policies evidencing such coverage shall be promptly provided to the Parties whenever requested.

Contractor shall provide certified copies of all insurance policies required above within 10 days of a written request by the Parties for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Parties have the right to reject insurance written by an insurer it deems unacceptable. Such insurance companies must be qualified to do business in Illinois.

3. Cross-Liability Coverage

If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Parties. At the option of the Parties, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Parties, their officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

5. Subcontractors

Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Parties, Contractor shall furnish copies of policies and/or certificates of insurance evidencing coverage for each subcontractor.

6. Claims Made Policies

If insurance coverage is purchased on a "claims made" basis, such coverage shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance required hereunder be cancelled.

F. Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Parties, and the architect and their officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of the Contractor's work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Contractor shall similarly protect, indemnify and hold and save harmless the Parties, their officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of the Contract.

EXHIBIT E-2-B

**INSURANCE TO BE MAINTAINED BY CONTRACTOR DURING
ROUTINE MAINTENANCE OF OVERPASS OR CONSTRUCTION OF TRAILS**

Contractor shall obtain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, including death, property damage and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and liability arising from the indemnity provisions of any agreement between the Contractor and the Railroad.

The Parties shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Parties

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

B. Continuing Completed Operations Liability Insurance

Contractor shall maintain commercial general liability (CGL) and, if required by the Parties commercial umbrella liability insurance with a limit of not less than \$1,000,000 each occurrence for at least three years following substantial completion of the work.

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 10 93, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

Continuing commercial umbrella coverage, if any, shall included liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

C. Business Auto and Umbrella Liability Insurance

Contractor shall maintain business auto liability and commercial umbrella liability insurance with a limit of not less than \$1,000,000 each occurrence or claim. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos and mobile equipment to the extent it may be excluded from CGL coverage.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

D. Workers Compensation Insurance

Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the Parties have not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against the Parties, and their officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's work.

E. General Insurance Provisions

1. Evidence of Insurance

Prior to beginning work, Contractor shall furnish the Parties with a certificate(s) of insurance, other than Accord 25-S, and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All policies shall provide for 30 days' written notice to the Parties prior to the cancellation or material change of any insurance referred to therein. Written notice to the Parties and the Railroad shall be by certified mail, return receipt requested.

Failure of the Parties to demand such certificate, policy, endorsement or other evidence of full compliance with these insurance requirements or failure of the Parties to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

The Parties or the Railroad shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Parties

Failure to maintain the required insurance may result in termination of this Contract at the Parties' or the Railroad's option.

With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) or policy evidencing such coverage shall be promptly provided to the Parties whenever requested.

Contractor shall provide certified copies of all insurance policies required above within 10 days of written request by the Parties for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Parties have the right to reject insurance written by an insurer it deems unacceptable. Such insurance companies must be qualified to do business in Illinois.

3. Cross-Liability Coverage

If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provided cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Parties and the Railroad. At the option of the Parties, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Parties, their officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

5. Subcontractors

Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Parties, Contractor shall furnish copies of policies and/or certificates of insurance evidencing coverage for each subcontractor.

6. Claims Made Policies

If insurance is purchased on a "claims made" basis, such coverage shall provide for at least a three (3) year extended reporting or discovering period, which shall be invoked should insurance required hereunder be cancelled.

F. Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Parties, and the Architect and their officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of the Contractor's work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Contractor shall similarly protect, indemnify and hold and save harmless the Parties, and their officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of the Contract.

EXHIBIT E-3

INSURANCE TO BE MAINTAINED BY ENGINEERS, ARCHITECTS

Architects and Engineers (hereinafter "Engineer") shall obtain and maintain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Engineer shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Parties shall be included as insureds under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Parties.

B. Professional Liability Insurance

Engineer shall maintain professional liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each wrongful act arising out of the performance or failure to perform professional services.

C. Business Auto and Umbrella Liability Insurance

Engineer shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

D. Workers Compensation Insurance

Engineer shall maintain workers compensation and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the Parties have not been included as an insured under the CGL using ISO additional insured endorsement CG 20 26 under the Commercial General and Umbrella Liability Insurance required in this Agreement, the Engineer waives all rights against the Parties, and their directors, officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Engineer's work.

E. General Insurance Provisions

1. Evidence of Insurance

Prior to beginning work, Engineer shall furnish the Parties with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All policies shall provide for 30 days' written notice to the Parties prior to the cancellation or material change of any insurance referred to therein. Written notice to the Parties and the Railroad shall be by certified mail, return receipt requested.

Failure of the Parties to demand such certificate, policy, endorsement or other evidence of full compliance with these insurance requirements or failure of the Parties to identify a deficiency from evidence that is provided shall not be construed as a waiver of Engineer's obligation to maintain such insurance.

The Parties and the Railroad shall have the right, but not the obligation, of prohibiting Engineer from beginning services or work until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Parties.

Engineer's failure to provide or maintain the required insurance may result in termination of this Agreement at the Parties' option. Engineer shall be solely liable for damages incurred or sustained by either of the Parties as a result of such failure by Engineer.

Engineer shall provide certified copies of all insurance policies required above within 10 days of the Parties' written request for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Parties shall have the right to reject insurance written by an insurer it deems unacceptable.

3. Cross-Liability

If Engineer's liability policies do not contain the standard ISO separation of insured provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Parties and the Railroad. At the option of the Parties, the Engineer may be asked to eliminate such deductibles or self-insured retentions as respects the Parties, , their directors, officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

5. Subcontractors

Engineer shall cause each subcontractor/consultant employed by Engineer to purchase and maintain insurance of the type specified above. When requested by the Parties, Engineer shall furnish copies of policies and/or certificates of insurance evidencing coverage for each subcontractor/consultant.

F. Indemnification

Engineer shall indemnify and hold harmless the Parties, and their directors, officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorneys' and paralegals' fees and court costs), arising out of or resulting from the performance of the Engineer's services or work, which claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Engineer, any subcontractor or consultant or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Engineer shall similarly protect, indemnify and hold and save harmless the Parties, and their directors, officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Engineer's breach of any of its obligations under, or Engineer's default of, any provision of this Agreement.